Planning Inspectorate

Costs Decision

Site visit made on 14 January 2025

by N Kempton BAHons PGDip MA IHBC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2025

Costs application in relation to Appeal Ref: APP/A4520/W/24/3349402
Former Brigham and Cowan Dock 4 Entrance, Long Row, South Shields NE33 1JA

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Mark Turnbull for a full award of costs against South Tyneside Council.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the installation of floating pontoon and wave break, with access ladder without complying with a condition attached to planning permission Ref ST/0353/20/FUL, dated 15th March 2021.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The PPG sets out that if it is clear that the local planning authority will fail to determine an application within the time limits, it should give the applicant a proper explanation. If an appeal in such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.

4. Furthermore, the PPG makes it clear that a local planning authority may be at risk of a substantive award of costs if it fails to substantiate its reasons for refusal at appeal, or makes vague, generalised, or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.

5. The claimant's grounds are that with no credible reason for delay, the Council failed to determine the application within the prescribed timescale. It is the claimant's case that the Council's decision to defer the application, and ultimately to defend the appeal, was unjustified and ill-founded. This caused them to incur unnecessary or wasted expense in pursuing the appeal, which constitutes unreasonable behaviour.

6. The planning application, which was submitted in January 2024, was heard at a meeting of the Planning Committee on the 17th June 2024, with a positive

recommendation to approve. An extension of time had previously been agreed between the applicant's agent and the case officer until the date of the meeting.

7. At the meeting, the Planning Committee deferred the application pending determination of a separate Definitive Map Modification Orders (DMMO) application, which related to a claimed public right of way alongside the dockside. The deferral was due to concerns surrounding residential amenity impacts arising from the level of activity on the dockside adjacent to the floating pontoon. The deferral was made despite being advised by both the Senior Planning Officer and the Council's Solicitor, who were both present at the meeting, that this DMMO application had no bearing on the S73 application.

8. The DMMO application was due to be determined at the next Planning Committee meeting on the 15th July 2024. However, the applicant's application was not included on the agenda for that meeting. No explanation for the omission was provided. No date was agreed for when the application would be heard at a subsequent committee meeting. As such, the date for determination was indeterminate. The applicant appealed on 2nd August 2024.

9. The Council's Planning Committee subsequently refused the DMMO application on grounds of residential amenity.

10. Whilst a Planning Committee is entitled to make decisions that are contrary to the officer recommendation, there is an expectation that where this occurs it should show reasonable planning grounds for taking a contrary decision and produce sound, substantive and defensible evidence on appeal.

11. The reason for delay, beyond the agreed extension, is unsubstantiated.

12. The Council's Statement of Case, for the appeal against non-determination, states that they would have refused planning permission on grounds of impact on residential amenity. It is acknowledged that the minutes of the Council's Planning Committee meeting evidence that the Committee had raised concerns relating to the residential amenity impacts of the applicant's application. The impact of the proposal on the living conditions of occupiers of nearby residential properties, with particular regard to noise and disturbance, is a valid concern. However, no substantive evidence has been provided to demonstrate that the inclusion of safety and educational boats would have a greater impact upon residential amenity compared with the permitted mooring of recreational leisure boats.

13. I conclude, therefore, that the Council has offered no evidence to rebut the applicant's claim. It did not determine the planning application within the time limit. It gave the applicant no explanation to justify the delay, and it has given no substantive reason for the delay in response to this application for costs.

14. Furthermore, whilst the Council has provided an explanation of concerns regarding the impact of the proposal upon residential amenity, no substantive evidence has been produced to date, to support the Council's concerns- or indeed to substantiate its reasons for refusal, had it determined the application- to demonstrate greater harm arising from the proposed development compared with that which has previously been approved. The Council's conclusion on this point was therefore unreasonable.

15. There is no evidence of any unreasonable behaviour on the part of the applicant in causing or adding to the delay. It is clear that better communication with the applicant may have enabled the appeal to have been avoided altogether. This was unreasonable behaviour.

16. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and a full award of costs is therefore justified.

Costs Order

17. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that South Tyneside Council shall pay to Mr Mark Turnbull, the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.

18. The applicant is now invited to submit to South Tyneside Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

N Kempton

INSPECTOR